

REMARKS

Claims 10-16 are currently pending in the application.

The Examiner has advanced a SIX (6) way Restriction Requirement.

With respect to the restriction requirement, the Examiner requires Applicants to elect one of SIX (6) inventions allegedly disclosed in the above application. The Examiner has also advanced an election of species requirement, which is also addressed herein.

At the outset, applicants note that restriction of claims belonging to each one of Group I (claims 11-7), Group II, (claims 8-12) and group III (claim 13) under 35 U.S.C. 121 is respectfully traversed. It is respectfully submitted that a search of the Group I claims would of necessity, include a search of the Group II and III claims since these relate to the use of a nucleotide sequence. Consequently, these groups should be combined.

As such, no savings of PTO resources will be achieved by enforcing the election/restriction requirement presently asserted. Accordingly, reconsideration and withdrawal of the requirement for election/restriction of the claims, e.g., by combining Groups I, II and III is respectfully requested.

In order to be fully responsive, Applicants elect the invention defined by the Group I claims without prejudice to the prosecution of the non-elected claims in a related patent application.

As regards the species election requirement relative to the Group I claims, Applicant's elect the genes exemplified in Table 3 and the patient being treated with a KDR kinase inhibitor as detailed in claim 6.

Applicants retain the right to petition from the restriction requirement under 37 C.F.R. §1.144. Favorable reconsideration of the Restriction requirement is respectfully requested.

It is believed that the claims are in a condition for allowance and a notice to that effect is earnestly solicited.

If the Examiner believes that a telephone conference would be of value, he is requested to call the undersigned counsel at the number listed below.

Any additional fees required in connection with this submission may be taken from Merck Deposit Account No. 13-2755.

Respectfully submitted,

By: /Vineet Kohli, Reg. No. 37,003/
Vineet Kohli
Reg. No. 37,003
Attorney for Applicant

MERCK & CO., INC.
P.O. Box 2000
Rahway, New Jersey 07065-0907
(732) 594-3889

Date: January 15, 2010